

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Reallocation and Service Rules for the)	GN Docket No. 01-74
698-746 MHz Spectrum Band)	
(Television Channels 52-59))	

To: The Commission

PETITION FOR RECONSIDERATION OR CLARIFICATION

 KM Communications, Inc. (“KM”), by its counsel, and pursuant to Section 1.429 of the Commission’s rules, 47 C.F.R. § 1.429, respectfully submits this Petition for Reconsideration or Clarification (“Petition”) of the Commission’s Report and Order in the above-captioned proceeding.¹ Specifically, KM requests that the Commission clarify that in implementing its decision in the Reallocation Order, the Commission staff should not require all pending mutually exclusive applicants for new television broadcast stations to join in any petition or amendment to petition for rule making proposing to substitute an alternate channel for their proposed new stations. In support of this Petition, KM respectfully submits the following:

1. In the Reallocation Order, the Commission decided that all petitions for rule making for new analog television allotments on Channels 52-59 should be dismissed, but that any applicants

¹ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, Report and Order, FCC 01-364 (released January 18, 2002) (the “Reallocation Order”). KM actively participated in this proceeding, filing Comments on March 15, 2001. This petition for reconsideration or clarification is being filed within 30 days after publication of notice of the Reallocation Order in the Federal Register, see 67 Fed. Reg. 5491 (February 6, 2002), and therefore it is timely-filed. See § 1.429(d).

for construction permits for new television broadcast stations proposing such allotment changes would be permitted to file an amendment to any such pending petition for rule making, proposing a new analog television allotment on Channels 52-59, to propose substitution of an alternate analog channel on Channels 2-51 (i.e., in the “core”) or digital channel on Channels 2-58. See Reallocation Order at ¶ 45. Any such amendment to petition for rule making must be filed by no later than Friday March 8, 2002, and any application for a construction permit for which such a petition or amendment is required that does not timely-file such an amendment is subject to being dismissed. Id. at ¶¶ 45 and 191.

2. The full Commission did not expressly require that any such amendment be filed jointly by all applicants for construction permits for new television stations on the proposed allotment, but did state that the “Mass Media Bureau will set forth [procedures for such petitions or amendments] in a soon-to-be released Public Notice.” Id. at ¶ 45 and n.148. The Mass Media Bureau in turn released the planned Public Notice,² in which the Bureau stated:

Where multiple applications have been filed for a single NTSC channel allotment, a petition for rule making must propose a single replacement channel to which all applicants agree to modify their applications. If the conflicting applicants cannot agree on whether to submit a petition for rule making for the same replacement channel, then any petition for rule making filed by a member of such group will be dismissed.

² See Public Notice, Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Requests for New NTSC Television Stations on Channels 52-29, DA 02-270 (released February 6, 2002)(the “Filing Window Public Notice”).

See Filing Window Public Notice at 2 (emphasis added).

3. KM submits that such a bright line rule would not serve the public interest, and therefore the Commission should clarify the Reallocation Order, and for the Bureau, that a single joint petition or amendment to petition for rule making is not mandatory, perhaps treating any additional filings as counterproposals, or to at least consider on a case-by-case basis whether to require all pending mutually exclusive applicants to join in such amendments to petitions for rule making proposing to substitute an alternate channel.

4. By way of example, KM notes that it is an applicant for a construction permit for a new commercial analog television station on Channel 51 at Jackson, Mississippi (File No. BPCT-960930LW, Facility ID No. 84477), for which there are pending eight other mutually exclusive applications. On July 17, 2000, the majority of the applicants for analog Channel 51 at Jackson, (i.e., seven out of the nine mutually exclusive applicants, including KM, the “Joint Applicants”) jointly and timely filed a petition for rule making proposing the substitution of analog Channel 59 for analog Channel 51 at Jackson (the “Channel 59 Petition”), which will be dismissed if not amended by March 8, 2002 to specify an analog channel in the core (Channels 2-51) or a digital channel from among Channels 2-58. See Reallocation Order at ¶ 45. KM has made several attempts to initiate discussions in order to reach a consensus on an alternate channel, and has received very little (almost no) response from most of the other eight applicants; as a result, KM intends to file an amendment to the Channel 59 Petition proposing that an alternate channel (specifically, digital Channel 53) be substituted for the current analog Channel 51 at Jackson allotment.

5. However, KM notes that in response to the earlier July 17, 2000 filing deadline for petitions for rule making to change analog television allotments that may conflict with digital

television (“DTV”) allotments or authorizations, the nine mutually exclusive applicants for Channel 51 at Jackson could not agree on an alternate channel to propose to substitute, with seven of the nine applicants jointly filing the Channel 59 Petition and two of the nine applicants proposing a different channel. The two applicants that declined to join in the Channel 59 Petition instead wished to propose, and did propose, to substitute Channel 59 as the alternate channel for applications which they had pending for analog Channel 35 at Vicksburg, Mississippi, which is located only about 45 miles away from Jackson, Mississippi and in the same Designated Market Area (“DMA”) or local market, which would conflict with the Channel 59 Petition.

6. As a result of a settlement agreement, a construction permit for analog Channel 35 has now been granted to an entity in which KB Prime Media LLC (“KB”, or a party holding an attributable interest in KB), one of the nine Channel 51 at Jackson applicants (see File No. BPCT-19960710KY), holds a controlling 50% interest. KB also has a familial relationship with the controlling principal of an existing full power television station in the Jackson, Mississippi DMA, WDBD(TV), analog Channel 40/DTV Channel 41, Jackson, Mississippi. As a result, KB may prefer to not join in a joint petition for an alternate channel for Channel 51 at Jackson, in the hope that all of the pending applications are dismissed, eliminating a potential competitor to its authorized new station (as well as a family member’s existing full power television station) in the Jackson, Mississippi DMA. Such a result and the potential gaming of the Commission’s processes would not serve the public interest, and should not be permitted.

7. Furthermore, it is unreasonable for the Commission to expect a group of competing applicants, who otherwise not only do not normally do business together but are also already adverse, to reach agreement on such an issue as the alternate channel to propose. Each of the

competing applicants may have perfectly legitimate business reasons for favoring one channel over another. For example, during the earlier filing window KB and another Jackson applicant proposed the substitution of analog Channel 50 (rather than the analog Channel 59 proposed by the other seven applicants) for analog Channel 59 at Jackson; one of the reasons KM, and perhaps other of the Joint Applicants, did not favor Channel 50 was that it required a severe site restriction, and KM could not be sure that it would be able to acquire the necessary reasonable assurance of a site that satisfied the site restriction (KB may have been less concerned by this issue, since the WDBD(TV) tower met the site restriction, and KB may already have had some assurances for use of that tower due to its familial relationship with the owner of WDBD(TV) and its tower). KM also understands that at least two of the other Joint Applicants did not favor analog Channel 50 since they wished to propose analog Channel 50 as the alternate channel for other applications which they had pending in an adjacent market, which would conflict with the use of analog Channel 50 for Jackson.

8. This Petition of course is not about the relative merits of the Channel 51 Jackson proceeding, but rather this example is proffered by KM to demonstrate the fact that it would be unreasonable for the Commission to expect and require a group of competing, mutually exclusive applicants to necessarily agree upon and unanimously propose a single alternate channel. In addition, the sanction for not agreeing - - dismissal of the pending applications for new television stations, the grant of which would serve the public interest by providing valuable new television broadcast services to the public, see Reallocation Order at ¶ 42 - - would be unduly harsh in these circumstances, and would not serve the public interest. As an alternative, the Commission should consider all amendments to petitions for rule making proposing alternate new allotments that comply with its other policies adopted in the Reallocation Order, perhaps treating one such filing as the

primary petition or amendment and the remainder as counterproposals.. At a minimum, the Commission should consider on a case-by-case basis whether to require all pending mutually exclusive applicants to join in such petitions or amendments to petitions for rule making proposing to substitute an alternate channel, rather than having a prophylactic mandatory requirement that all such competing applicants join in a single petition or amendment of petition for rule making.

9. WHEREFORE, the above premises being considered, KM respectfully requests that the Commission reconsider and clarify the Reallocation Order in the manner requested herein by KM.

Respectfully submitted,

KM Communications, Inc.

By: _____
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CERTIFICATE OF SERVICE

I, Jeffrey L. Timmons, hereby certify that on this 6th day of March, 2002, copies of the foregoing "Petition for Reconsideration or Clarification" have been served by Federal Express and then hand delivery (* denotes such delivery) upon the following:

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